833

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 885 66.

MARY LOUISE KENADAY, EXECUTRIX, PLAINTIFF IN ERROR AND APPELLANT,

vs.

ARABELLA D. SINNOTT ET AL.

IN ERROR TO AND APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 23, 1899.

(17,419.)

(17,419.)

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 7, 1899.

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a Court of Appeals of the District of Columbia, April Term, 1899. No. 4, Special Calendar.

MARY LOUISE KENADAY, Executrix, Appellant,
vs.
ARABELLA D. SINNOTT, WILLIAM A. PILES, IDA PILES Miller, and Belle Hubert. } No. 890.

Appeal from the supreme court of the District of Columbia.

b Supreme Court of the District of Columbia.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Last Will and Testament of Alexander M. Kenaday.*

In the name of God, Amen. I, Alexander McConnell Kenaday, resident of Washington, District of Columbia, being of sound and disposing mind and memory, calling to mind the frailty and uncertainty of human life, and being desirous of settling my worldly affairs and directing how the estates which it has pleased God to bless me shall be disposed of—after my decease—while I have strength and capacity so to do, do make and publish this last will and testament, hereby revoking and making null and void all other last wills and testaments by me heretofore made. And first, I commend my mortal being to Him who gave it, and my body to the earth, to be buried with [as]* little expense by my executor hereinafter named.

Imprimis. My will is that all my just debts and funeral charges shall be paid out of my estate, by my executrix

Item. I give, devise and bequeath to my beloved wife, Mary Louise Kenaday, all my real estate, household furniture, and claims pending in the courts in relation to said real estate, to wit:

House and lot known as No. 507 & 509 on F street, northwest, Washington, D. C. lot No. 2 (east half) of square 482, 30 x 101.10

House and lot known as No. 621 H street, northwest, lot No. 483 sq. No. 483, 20 $\frac{4}{54}$ x 133 to an alley

House and lot known as No. 2006 G street, northwest, lot No. 25 in square No. 103, 20$\frac{3}{4}$ x 120 ft. to an alley.

And I hereby authorize my wife, as executrix, to convey by deeds

[* Word enclosed in brackets erased in copy.]

in fee-simple any or all of said real estate in accordance with the laws of the District of Columbia, under the advice of some competent attorney

Item. Included as claims pending in the courts, are: An account for taxes against the estate of De Vaughn *vs.* De Vaughn, unjustly withheld, in charge of my attorney Woodbury Wheeler, Esq. Also, an account for moneys withheld by the trustees of Edwards *vs.* Maupin. In charge of my attorney, Frank W. Hackett, Esq., amounting to $1078. with interest at six per cent. per annum from March 7, 1888.

2 Also, my business as a claim agent and as publisher of "The Vedette," together with all books, papers, files, office furniture, &c., &c. Also, 200 shares of Sutro Tunnel stock and Comstock bonds; also, notes and evidences of indebtedness to me, of more or less value; also, deposits of currency entered on my bank book of the National Metropolitan bank, amounting to $10,000.00 more or less

Item. I give, devise and bequeath to my beloved sister Arabella D. Sinnott, residing in New Orleans, La., twelve thousand dollars in registered U. S. 4% bonds, on special deposit in the National Metropolitan bank

Item. I give, devise and bequeath to the surviving children of my deceased sister, Martha J. Piles, out of the residue of 4% bonds deposited as aforesaid ($3,500.00) as follows: To Mrs. Belle Hubert, $500.00 To *to* Wm. A. Piles, $500.00 To Ida Piles, $500.00 To Eloise Piles, $500.00 To Edith K. Piles, $750.00 To Henry C. Piles, $250.00

Item. The promissory note for $1100.00 filed with a chattel mortgage in my name in the office of the recorder of deeds, in the District of Columbia, signed by Mrs. Anna Hemenway, shall be cancelled, and my executrix may allow Mrs. Hemenway $500 in settlement of her account.

The bond of the city of Richmond, for $5000.00 bearing 5 per cent. interest, payable January and July—(on special deposit with the 4% bonds of the U. S. in the National Metropolitan bank,) is hereby devised and bequeathed to my wife and executrix.

San Francisco,

The sum of $5000.00 advanced to Wm. C. McGeorge of a California, no account of which has been rendered by him, is hereby devoted to the relatives of my wife, and used according to her discretion.

In testimony whereof, I, the said Alexander M Kenaday have pages to this my last will and testament, contained on four [sheets]* of this paper, and to every page thereof, subscribed my name and affixed my seal to the last sheet thereof, this 3d day of April, A. D. 1894.

ALEXANDER M KENADAY.

The above instrument, consisting of four pages, was now here subscribed by A. M. Kenaday, the testator, in the presence of each of us, and he has acknowledged to each of us that he has subscribed

the same, and [he]* at his request, sign our names hereto as attesting witnesses.

EWELL A. DICK (5th & F Sts.)
(509 F St.) GEORGE JEFFERSON.
(648 D S. W.) WM. H. BADEN.

Sworn and subscribed to before me this 3rd day of April, A. D. 1894.

[SEAL.] NATHAN H. ROBBINS,
Notary Public.

3 In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

Know all men by these presents that we, Mary Louise Kenaday, of the District of Columbia, and the Fidelity and Deposit Company of Maryland, incorporated under the laws of the State of Maryland, are held and firmly bound unto the United States of America in the full sum of forty-five thousand dollars, current money of said — States, to be paid to the said United States, their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, in and for the whole, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas the above-bounden Mary Louise Kenaday is about taking out from the supreme court of the District of Columbia letters testamentary on the personal estate of Alexander McConnell Kenaday, late of the District of Columbia, deceased:

The condition of the above obligation is such that if the above-bounden Mary Louise Kenaday shall well and truly perform the office of executrix of Alexander McConnell Kenaday, late of the District of Columbia, deceased, according to law, and shall, in all respects, discharge the duty of her required by law as executrix aforesaid, without any injury or damage to any person interested in the faithful performance of the said office, then the above obligation shall be void; it is otherwise to be in full force and virtue in law.

MARY LOUISE KENADAY. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [SEAL.]
By JAS. S. EDWARDS, *Of Local Board.*

Signed, sealed, and delivered in the presence of—
A. S. HARKNESS.

Attest: J. SPRIGG POOLE, *Agent.*

Approved:
A. B. HAGNER.

[* Word enclosed in brackets erased in copy.]

DISTRICT OF COLUMBIA, *To wit:*

I, Mary Louise Kenaday, do swear that I will well and truly administer the goods, chattels, personal estate, and credits of Alexander McConnell Kenaday, late of the District of Columbia, deceased, to the best of my knowledge, according to law, and will give a just account of my administration when thereto I shall be lawfully called. So help me God.

MARY LOUISE KENADAY.

Sworn and subscribed before me this 26th day of April, A. D. 1897.

Test: J. NOTA McGILL,
Register of Wills.

4 *Notice to Claimants.*

Filed June 10, 1898.

In the Supreme Court of the District of Columbia, Holding Orphans' Court.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

On motion of Mary Louise Kenaday, executrix, by her proctor, it is adjudged and ordered this tenth day of June, A. D. 1898, that Friday, the eighth day of July, 1898, be, and it is hereby, approved as the day for a meeting of creditors or persons entitled to distributive shares or legacies or a residue, and 10 o'clock a. m. as the hour for the same, in this court, and that a notice be published once a week for three weeks in "The Washington Law Reporter" in the following or equivalent form before said day:

Estate of Alexander M. Kenaday, deceased. No. 7744, docket 23, Mary Louise Kenaday, executrix of the last will of said deceased, has, with the approval of the supreme court of the District of Columbia, holding a special term for orphans' court business, appointed Friday, July 8, 1898, at 10 o'clock a. m., as the time and said court as the place for making payment and distribution under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched: Provided, this order be published once in each of three successive weeks before said day in the "Washington Law Reporter."

Signed June 10, 1898.

J. NOTA McGILL,
Register of Wills.

WM. HENRY DENNIS,
Proctor for Executrix.

By the court:
A. B. HAGNER,
Asso. Justice.

5 *Petition.*

Filed July 8, 1898.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

Estate of ALEXANDER M. KENADAY, Deceased—MARY LOUISE KENADAY, Executrix. No. 7744.

Petition of Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hurbert.

Petitioners respectfully show to this honorable court that they are citizens and residents of New Orleans, State of Louisiana, and are the only surviving next of kin and heirs-at-law of Alexander M. Kenaday, deceased, who died in the city of Washington March 25, 1897.

Your petitioner Arabella D. Sinnott is the only surviving sister and your petitioners William A. Piles, Ida Piles Miller, and Belle Hurbert are the only surviving children of his deceased sister, Martha J. Piles.

The said Alexander M. Kenaday, deceased, left no children nor descendants of children.

He left a last will and testament, which was duly admitted to probate and is recorded in the office of the register of wills for this District, and on the 26th of April, 1897, his widow, Mary Louise Kenaday, was duly appointed and qualified as executrix and took charge of said estate.

On the 30th of April, 1897, an inventory of said estate was filed in this honorable court showing the amount which went into the hands of said executrix.

On the — day of June, 1897, the executrix paid over to your petitioner Arabella D. Sinnott the legacy of $12,000 in the United States registered 4% bonds left her by said will.

The executrix also paid over to your petitioners—

William A. Piles	$500.00
Ida Piles Miller	500.00
Belle Hurbert	500.00

in money as their legacies in said will. She also paid to another legatee, Edith K. Piles (since dead), $750.00 in money as her legacy.

The other two legatees, to wit, Henry C. Piles and Eloise Piles, have not been paid the amounts left them, the said Eloise having died before the testator, Alexander M. Kenaday, and the said Henry C. not having been heard from during the last six years and who your petitioners believe is dead.

6 Your petitioners show that there remains undistributed in the hands of said executrix, as set forth in the inventory filed by her on April 30, 1898, U. S. 4 % registered bonds, $12,500, together with the interest collected on same.

Interest checks, U. S. Treasury	$1,715.00
Pension " " "	248.00
Cash on deposit Metropolitan bank	810.00

which were not disposed of by said will and which belong to your petitioners, as they are advised, as next of kin of the said Alexander M. Keneday, deceased, in the following proportions, to wit:

One-half to your petitioner Arabella D. Sinnott and one-half to your petitioners William A. Piles, Ida Piles Miller, and Belle Hurbert in equal shares.

Your petitioners, therefore, pursuant to the order of this court passed herein on June 10, 1898, file this their claim as distributees to said personal estate, and pray that a decree be rendered by this honorable court directing said executrix, after deducting all proper credits, to pay over to your petitioners in the respective proportions due them as distributees thereof, as hereinbefore set forth, the United States 4 % registered bonds and moneys hereinbefore mentioned.

And that petitioners may have such other and further relief as to the court may appear just and proper, the premises considered.

A. D. SINNOTT.
WM. A. PILES.
IDA P. MILLER.
BELLE HUBERT.

F. P. B. SANDS,
W. A. MILLIKEN,
Proctors for Claimants.

STATE OF LOUISIANA, *To wit:*

The petitioners, Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hurbert, being duly sworn according to law, depose and say that they have read the above petition by them signed and that they know the contents thereof, and that the facts therein stated as of their own knowledge are true and those facts stated upon information and belief they believe them to be true.

A. D. SINNOTT.
WM. A. PILES.
IDA P. MILLER.
BELLE HUBERT.

Subscribed and sworn to before me this fifth day of July, A. D. 1898.

[SEAL.]

WM. R. KER,
Notary Public.

7 *Account.*

Filed July 15, 1898.

No. 7744. Admn. Doc. 23.

Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

First Account of Mary Louise Kenaday, Executrix of the Last Will and Testament of Alexander M. Kenaday, Deceased.

(Letters testamentary issued April 26, 1897.)

This accountant charges herself with the inventory by her returned on April 30, 1897 (recorded in Liber of Inventories No. 32, J. N. McG., at folio 353), consisting of the following:

$5,000 bond of city of Richmond, Va., appr. @	$5,000.	
24,500 U. S. 4 % registered bonds (due in 1907), appr. @	27,195.	
200 shares stock Comstock Tunnel Co., appr. @	0.	
1 certificate of scrip of the said Comstock Tunnel Co., appr. @	0.	
Household furniture, &c	418.75	
		$32,613.75

Also with the inventory of money as well as list of debts due the estate filed with the above (recorded in same Liber, folio 358), embracing the following items:

Cash found on deposit in Nat'l Met'n bank, D. C.	$810.60	
Interest checks, U. S. bonds	1,715.	
United States pension checks	248.	
		2,773.60

(The note of Anna Hemenway mentioned in will of testator has never been found by this accountant.)

She also charges herself with the following collections:

1897.		
July 16. Gain on sale of $1,500 U. S. bonds	$7.50	
July 1. Interest on $24,500 U. S. 4 % "	245.	
" " " Richmond bond ($5,000)	125.	
Oct. " " " $11,000 U. S. 4 % bonds	110.	
1898.		
Jan'y 1. " " " " " "	110.	
" " " Richmond bond	125.	
Ap'l " " " $11,000 U. S. 4 % bonds	110.	
July " " " " " "	110.	
" " " Richmond bond	125.	
		1,067.50
Amount forward		$36,454.85
Amount brought forward	$36,454.85	

She asks credit and allowance for the following:

By paid funeral expenses:

Joseph Gawler, undertaker, Vou. 1		$268.50

By paid debts and liabilities of decedent:

Dr. H. H. Barker,	Vou. 2	$107.	
" Jas. T. Sothoron,	" 3	30.	
D. C. tax, 1896-'97,	" 4	291.26	
R. L. Quigley, druggist,	" 5	11.60	
D. C. sp'l assessment,	" 6	9.12	
Wash'n Gaslight Co.,	" 7	8.12	
			457.10

8	By commissions on $36,454.85, at 10 per cent. (out of which executrix has paid for bond $100, also counsel fees)			3,645.48
	By paid costs and expenses:			
	Wash'n Law Reporter,	Vou. 8..	$6.30	
	" " "	" 9..	5.00	
	Wash'n Post,	" 10..	6.10	
	Witnesses to prove will,	" 11..	3.75	
	Wash'n Safe Dep. Co., rent of box,	" ..	2.50	
	Appraisers,	" 13..	6.00	
	Court of Appeals, D. C., costs,	" 14..	28.85	
	Register of wills,	" 15..	28.57	
	" " " (this ac.),	" 16..	29.69	
	Wash'n Law Reporter "final notice,"	" 17..	7.50	
			.....	124.26
				$4,495.34
	Balance for distribution			31,959.51
			$36,454.85	$36,454.85

Balance for distribution brought forward $31,959.51

The executrix, respectfully reserving all her rights to relief and protection in this court and in a court of equity, states that she has made the following actual disposition of said balance:

To Rock Creek cemetery, for burial lot, etc., receipt No. 1...		.....	$317.
" " " " " monument, etc , receipt No. 2.		.....	575.
(The above under her powers as executrix in regard to the interment.)			
To *Arabella D. Sinnott* (her legacy), $12,000 U. S. 4 % bonds appraised @ .....$13,320.			
Interest on same from April 1, 1897, to July 1, 1897 (time of delivery)..	120.		
		.....	13,430.
To Mrs. *Belle Hubert*, legacy (paid July 16, 1897).....		.....	500.
" *William A. Piles*, legacy (paid July 16, 1897).....		.....	500.
" *Ida Piles Miller*, legacy (paid July 16, 1897)...		.....	500.
" *Edith K. Piles*, legacy (paid May 16, 1897) (now deceased)		.....	750.
" *Henry C. Piles*, if living, the amount *reserved* by executrix in case of his appearance to claim his legacy		.....	250.
To *Anna Hemenway*, her legacy.....		.....	500.
			$17,322.
To *Mary Louise Kenaday* (widow), city of Richmond bond, appraised @.....	$5,000.		
Household furniture, " "	418.75		
"Sutro Tunnel stock" (Comstock), appraised @.	0.		
And on account of the bequest to her by the testator of "notes and evidences of indebtedness to me," "deposits of currency entered on my bank book," and other personal estate, the residue, consisting mainly of United States bonds and deposits in bank.	9,218.76		
		.....	14,637.51
		$31,959.51	$31,959.51

MARY LOUISE KENADAY,
Executrix of Estate of A. M. Kenaday, Deceas'd.

9 DISTRICT OF COLUMBIA, *To wit:*

JULY 14TH, 1898.

This day appeared Mary Louise Kenaday, executrix under the will of Alexander M. Kenaday, deceased, as aforesaid, and made oath on the Holy Evangels of Almighty God that the foregoing account as stated is just and true; that she has *bona fide* paid or secured to be paid the several sums for which she claims credit and allowance.

Test: DORSEY CLAGETT,
[SEAL.] *Notary Public for the District of Columbia.*

Exceptions to Account.

Filed July 22, 1898.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

Now come Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hurbert, next of kin and only surviving heirs-at-law of Alexander M. Kenaday, dec'd, and, by their proctors, William A. Milliken and Francis P. B. Sands, file these their exceptions to the last account filed by the executrix, Mary Louise Kenaday, herein.

First. These exceptants object to the claim of ten per cent. commission on the gross amount of inventory, for the reasons that the estate, consisting mainly of United States bonds and other bonds, called for no action on the part of the executrix that would in any event warrant a claim or an allowance of more than five per cent. commission thereon; and, further, because the specific bequest of the $5,000 Richmond City bond to the executrix *as such* was clearly intended to be in lieu of all commissions.

Second. These exceptants object to the claim presented by the executrix to commissions on the $5,000 Richmond City bond, and the interest thereon, collected by her, and on the appraised value of the household furniture, to wit, $418.60, for the reason that those two items were bequeathed to her specifically on which no commissions can properly be allowed.

Third. These exceptants object to the credits claimed by said executrix of the items for purchase of burial lot and for the monument, aggregating the sum of $892, as being excessive, illegal, and in violation of the provisions of the will of decedent.

Fourth. These exceptants object to the pretense of claim made in said account by the said executrix as to the entire balance and residue of the estate in her own right, for the reasons that there is no residuary clause in said will making any such disposition of said residue; that one of the legacies failing because of the death of the legatee prior to the death of the testator that legacy went into the residue of the estate not disposed of by the will and because *the* all

the said residue undisposed of by the will belongs to these exceptants as the only next of kin and heirs-at-law of the decedent, Alexander M. Kenaday, and, further, because the United States registered 4 % bonds, forming the main portion of the said residue of the personal estate, amounting to $12,500, were acquired by the decedent after the date of his said will, and were not disposed of by the said will in anywise, and therefore belong to these exceptants as such next of kin and heirs-at-law of said decedent.

Fifth. These exceptants object to the sale of $1,500 of the United States 4 % registered bonds, as recited by the executrix, the said bonds having formed a part of the undisposed-of estate belonging to these exceptants, as next of kin to decedent, and the executrix was without power, in the absence of authority from this court, by its order, to dispose of said bonds.

W. A. MILLIKEN,
F. P. B. SANDS,
Proctors for Exceptants.

10 *Order.*

Filed July 22, 1898.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of ALEXANDER M. KENADAY, Dec'd. No. 7744.

On motion of F. P. B. Sands and Wm. A. Milliken, proctors for Arabella B. Sinnott *et al.*, next of kin of the decedent, A. M. Kenaday, dec'd, it is, this 22d day of July, 1898, ordered that the Secretary of the Treasury be, and he is hereby, requested to order to be certified to this court a copy from the records of the office of the Register of the Treasury of the amount of registered U. S. 4% bonds standing in the name of Alexander M. Kenaday on the 1st day of April, 1897.

A. B. HAGNER,
Asso. Justice.

Certificate.

Filed August 5, 1898.

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT, *August* 1, 1898.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed certificate of the Register of the Treasury is a true statement of the registered bonds therein described as shown by the records in this department.

In witness whereof I have hereunto set my hand and caused the

seal of the Treasury Department to be affixed on the day
[SEAL.] and year first above written.

O. L. SPAULDING,
Acting Secretary of the Treasury.

W. R.
S. M. G.

All official letters to this office must be addressed to the Register of the Treasury.

Initials C. P. F.

TREASURY DEPARTMENT,
OFFICE OF THE REGISTER,
WASHINGTON, D. C., *July 30th*, 1898.

I hereby certify that the records of this office show that the following-described registered bonds of the United States—four per cent. consols of 1907—were standing in the name of Alexander M. Kenaday on the first day of April, 1897, viz:

Date.	Number.	Amount.
April 23rd, 1889	71,519	$500
"	37,400	5,000
"	37,401	5,000
"	37,402	5,000
April 1st, 1895	44,695	5,000
"	183,336	1,000
"	183,337	1,000
"	183,338	1,000
"	183,339	1,000
Total		$24,500

J. W. LYONS,
Register of the Treasury.

11 *Answer to Exceptions.*

Filed August 5, 1898.

In the Supreme Court of the District of Columbia, Holding Orphans' Court.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

Answer to exceptions.

In answer to the exceptions filed July 22, 1898, by Arabella D. Sinnott and others, the executrix, Mary Louise Kenaday, says that she is advised that said exceptions have no legal standing before the court until and unless in a court of equity the exceptants ob-

tain a decree that this executrix is trustee for the next of kin for a balance in her hands of which it shall be then established that the testator did not intend the executrix to have the beneficial enjoyment, and she states that no bill in equity has been filed for that purpose.

Respectfully reserving her rights in this respect, she further says:

First. She has asked for ten per cent. commissions for the reasons, among others, that the parties now excepting have for a long time subjected her to annoyance and litigation, as shown in part by the records of this court, and are still keeping up litigation to an extent that cannot be foreseen, thereby causing her an indefinite amount of expense for attorneys and counsel. The bequest of the city of Richmond bond merely designates her as "my wife and executrix," and is not stated to be for services as executrix.

Second. She is advised that the second exception is not well founded in law.

Third. The executrix is authorized by the will to pay all funeral charges, and did so in accordance with the means and condition in life of the testator. She understood that this was in accordance with the wishes of all his family.

Fourth. The executrix has distributed to herself what remains of the personal estate after paying the legacies to other persons, because it comes under the designations of "evidences of indebtedness," "deposits of currency," etc., which are bequeathed to her. She is advised that in any case she would be entitled to retain the same as executrix until the next of kin obtained a decree in equity making her trustee for them upon a construction of the will. She is advised that it is immaterial when the testator bought the bonds he owned at his death.

Fifth. The $1,500 of the United States bonds were sold in order to pay speedily the legacies to the nieces and nephews of testator in a few months after his death, and receipts in full were given for said legacies by the parties, who professed themselves satisfied and one of whom has since died.

WM. H. DENNIS,
Proctor for Executrix.

12 1898, Oct. 7.—Cause argued on exceptions and submitted.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

On this 11th day of October, A. D. 1898, the foregoing account being now presented for approval, the same is, after examination by the court, approved and passed.

A. B. HAGNER, *Justice.*

Appeal.

Filed October 13, 1898.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Account of MARY LOUISE KENADY, Executrix of Alexander McConnell Kenaday, Dec., & Exceptions Thereto. No. 7744.

Now come the exceptors, Arabella D. Sinnott, William A. Pyles, Ida Pyles Miller, and Belle Hurbert, and by their solicitor, W. A. Milliken, enter & file this their appeal to the Court of Appeals of the District of Columbia from the order passed herein on the eleventh day of October, 1898, by the justice presiding in special term, in the above-entitled proceedings overruling the exceptions & passing & approving the account filed herein by the executrix.

W. A. MILLIKEN,
Solicitor for Exceptors.

Service of citation waived.
Oct. 12th, 1898.

WM. H. DENNIS,
Proctor for Executrix.

13 *Mandate of Court of Appeals.*

Filed January 20, 1899.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable [SEAL.] the justices of the supreme court of the District of Columbia, Greeting:

Whereas lately, in the supreme court of the District of Columbia, before you or some of you, in a cause entitled *In re* estate of Alexander M. Kenaday, deceased, probate No. 7744, wherein the order of the said supreme court entered in said cause on the 11th day of October, A. D. 1898, is in the following words, viz:

"In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

On this 11th day of October, A. D. 1898, the foregoing account being now presented for approval, the same is, after examination by the court, approved and passed.

A. B. HAGNER, *Justice.*"

as by the inspection of the transcript of the record of the said supreme court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal taken by Arabella D. Sinnott, William A. Pyles, Ida Pyles Miller, and Belle Hurbert,

whereon Mary Louise Kenaday, executrix of Alexander M. Kenaday, deceased, was made appellee, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas in the present term of January, in the year of our Lord one thousand eight hundred and ninety-nine, the said cause came on to be heard before the said Court of Appeals on the said transcript of record and was argued by counsel:

14 On consideration whereof it is now here ordered and adjudged by this court that the order of the said supreme court in this cause of October 11th, 1898, approving and passing the account of the executrix, be, and the same is hereby, reversed with costs, and that the said Arabella D. Sinnott *et al.* recover against the said Mary Louise Kenaday, executrix of Alexander M. Kenaday, deceased, thirty-two dollars and twenty cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said supreme court, that the account be restated in accordance with the principles of the opinion of this court.

JANUARY 3, 1899.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Richard H. Alvey, Chief Justice of said Court of Appeals, the 20th day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Costs of Sinnott et al.

Clerk	$6.20
Printing record	26.00
	$32.20

Endorsed: No. 7744, D. 23. Court of Appeals of the District of Columbia. No. 855, January term, 1899. Arabella D. Sinnott *et al.*, appellants, *vs.* Mary Louise Kenaday, executrix of Alexander M. Kenaday, deceased. Mandate. Filed Jan. 20, 1899. J. Nota McGill, register of wills.

15 *Order of Reference to Register of Wills.*

Filed January 20, 1899.

ARABELLA D. SINNOTT ET ALS.
vs.
MARY LOUISE KENADAY, Ex., &c.

This cause came on for further hearing upon the mandate of the Court of Appeals, reversing the action of Justice Hagner on Oct. 11th, 1898, approving & passing the account of the executrix, Mary Louise Kenaday, and directing the said account be restated by this court in accordance with the principles of the opinion of the Court of Appeals rendered herein. It is therefore ordered that the account filed herein by the said Mary Louise Kenaday, executrix of A. M. Kenaday, dec., be referred to the register of wills to restate the account of said executrix, in accordance with the opinion of the Court of Appeals herein, and to report same to this court for further orders.

A. C. BRADLEY, *Justice.*

Endorsed: No. 7744, D. 23. *In re* estate of Alexander M. Kenaday, deceased. Order of reference to the register of wills to restate the account of the executrix in accordance with the opinion of the Court of Appeals. Filed Jan. 20, 1899. J. Nota McGill, register of wills.

16 *Affidavit of Arabella D. Sinnott.*

Filed January 26, 1899.

Supreme Court for the District of Columbia, Holding a Special Term for Orphans' Court Business.

ARABELLA D. SINNOTT ET ALS.
v.
MARY LOUISE KENADAY, Executrix, &c.

In the matter of the settlement of the estate of Alexander McConnell Kenaday, dec.

Arabella D. Sinnott makes oath that she is the only surviving sister of Alexander McConnell Kenaday, dec. His only other sister, Mrs. Martha J. Piles, died Jan., 1887, leaving surviving her *six* childre*d*, to wit, Mrs. Belle Hubert, Mrs. Ida Piles Miller, William A. Piles, Eloise Piles, Edith K. Piles, and Henry C. Piles. Of these, Eloise Piles died Feb'y, 1895; Edith K. died June, 1897, and Henry C. is believed to be dead. He left his home in New Orleans, La., some time prior to the death of his mother, Jan., 1887, and has not been since heard from by affiant nor by his brother William A. nor by any of his sisters. Affiant has made an earnest effort to ascertain information concerning him by extensive correspondence with those

who knew him in different parts of the United States, and by advertisement in the daily papers in New York, Chicago, and San Francisco, but has failed to obtain any information whatever concerning him.

His brother & sisters have also made diligent effort to find him or to obtain information concerning him, but to no avail, and in the settlement of his mother's estate in New Orleans he has been presumed to be dead, and his interest in said estate has been distributed accordingly between his brother & sisters. Owing to his long absence & silence and the inability of affiant or any of his family to obtain any information concerning him, affiant be-
17 lieves he must be dead.

ARABELLA D. SINNOTT.

Sworn to and subscribed before me this 26th day — Jan., 1899.
[SEAL.] GEO. W. LINKINS,
Notary Public.

Endorsed: No. 7744, D. 23. Arabella D. Sinnott *et als. v.* Mary Louise Kenaday, executrix. Affidavit of A. D. Sinnott as to Henry C. Piles' absence. Filed Jan. 26, 1899. J. Nota McGill, register of wills.

Affidavit of Wm. A. Piles et al.

Filed February 10, 1899.

ARABELLA D. SINNOTT, WILLIAM A. PILES, IDA PILES MILLER, and Belle Hubert
vs.
MARY LOUISE KENADAY, Executrix.

Affidavit.

STATE OF LOUISIANA, *City of New Orleans.*

Personally came and appeared before me, the undersigned authority, William A. Piles, Mrs. Ida Piles Miller, and Mrs. Belle Hubert, each of whom, being by me first duly sworn, did depose and say that their mother, Martha J. Piles, who was a sister of Alexander McConnell Kenaday, dec., died in New Orleans, La., in January, 1887, leaving surviving her children, William A. Piles, Ida Piles Miller, Belle Hubert, Edith K. Piles, Eloise Piles, and Henry C. Piles; that the said Henry C. Piles was absent
18 from New Orleans at the time of his mother's said death; that he returned to New Orleans some time during the year 1888, the exact date of which affiants are unable to state; that he remained in New Orleans for about one year, to the best of affiant's knowledge, until some time in the latter part of the year 1889, when he again left said city for parts unknown to affiants, since which time nothing has been heard of him, nor have affiants been able to learn anything concerning him, although diligent inquiry has been

made by them. It is now more than nine years since he left New Orleans, his home, and as they have been wholly unable to find out anything concerning him, they believe him to be dead. Eloise Piles died in 1895; Edith K. Piles died in 1897. Affiants are, therefore, the only surviving children of Martha J. Piles, deceased, and as such are entitled to the one-half interest in the residue of the estate of their uncle, Alexander McConnell Kenaday, dec., and their aunt, Mrs. Arabella D. Sinnott, is entitled to the other half.

WILLIAM A. PILES.
MRS. IDA PILES MILLER.
MRS. BELLE HUBERT.

Sworn to and subscribed before me this sixth day of February, 1899.

[SEAL.] W. B. BARNETT, *Not. Pub.*

Endorsed: No. 7744, D. 23. *In re* estate of Alexander M. Kenaday, deceased. Affidavit as to death of Henry C. Piles, Eloise Piles, and Edith K. Piles. Filed Feb. 10, 1899. J. Nota McGill, register of wills.

19 *Account.*

Filed February 10, 1899.

No. 7744. Adm'n Doc. 23.

Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

Account of Mary Louise Kenaday, executrix under the will of Alexander M. Kenaday, deceased, stated by the register of wills in pursuance of an order of court passed herein January 20th, 1899.

She should be charged with the balance distributed to her in her individual capacity, as shown by her first account, approved & passed Oct. 11, 1898, from which an appeal was taken to the Court of Appeals of the District of Columbia, and, in accordance with the opinion rendered by said court, was remanded to this court for further proceedings		$9,208.76
She should also be charged with the accrued interest on the U. S. bonds, the same constituting a part of said balance, from the passing of said first account to the 1st January, 1899, namely:		
For October, 1898	$110.00	
" January, 1899	110.00	
		220.00
She should also be charged with the commission of 10 % allowed by said first account on $375.00, the accrued interest on the City of Richmond bond for $5,000, and held by said Court of Appeals to be a specific legacy to the said Mary Louise Kenaday		37.50
She should also be charged with the amount of costs in said Court of Appeals, directed by the mandate of said court to be recovered by Arabella D. Sinnott *et al.* against Mary Louise Kenaday, executrix		32.20
Carried forward		$9,498.46

20	Brought forward		$9,498.46	
	She is entitled to credit for the following:			
	Interest on the $5,000 City of Richmond bond heretofore referred to	$125.00		
		125.00		
		125.00		
			.....	$375.00
	Cash found on deposit at the time of testator's death (legacy).		.....	810.60
	Court costs from May 27, 1898, to January 20, 1899, including copies of records, filing of papers, recording orders and appeal bond, &c.	$21.15		
	And costs for this account, vou. 18	6.07		
			.....	27.22
				$1,212.82
	Balance for distribution		.....	8,2[illegible].64
			$9,498.46	$9,498.46
	Balance down		$8,285.64	
	Which is distributable as follows:			
	To Arabella D. Sinnott, sister, ½		.....	$4,142.82
	" Mrs. Bell- Piles Hubert, niece, ⅛ of ½		.....	828.56
	" Edith K. Piles, " " "		.....	828.56
	" Ida Piles Miller, " " "		.....	828.56
	" Wm. A. Piles, nephew, " " "		.....	828.56
	" Henry C. Piles, " " "		.....	828.56
	Fractions		.....	.02
			$8,285.64	$8,285.64

21 *On this 10th day of February*, A. D. 1899, the foregoing account being now presented for approval, the same is, after examination by the court, approved & passed.

A. C. BRADLEY,
Asso. Justice.

Endorsed: No. 7744, D. 23. *In re* estate of Alexander M. Kenaday, deceased. Account of Mary Louise Kenaday, executrix, stated by the register of wills under order of court dated Jan'y 20, 1899. Approved & passed Feb'y 10, 1899. Recorded, Accounts # 41, J. N. McG., folio 137. Filed Feb. 10, 1899. J. Nota McGill, register of wills.

Objections of Executrix.

Filed February 10, 1899.

In the Supreme Court of the District of Columbia, Holding Orphans' Court.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

Mary Louise Kenaday, executrix of the last will of Alexander M. Kenaday, deceased, respectfully reserving all her rights to relief at law or in equity, excepts and objects to the statement of account which she is informed has been prepared by the register of wills for submission to the court, and for grounds of objection shows:

1. That this executrix is thereby charged with an excessive amount as interest on United States bonds. The balance for dis-

tribution to the next of kin (under the decision of the Court of Appeals, unless hereafter modified), according to said state-
22 ment, is nominally $8,285.64, which, however, is shown by the accounts of the estate to consist wholly of United States 4 per cent. bonds, appraised at 111, so that less than $7,500 in par or face value of said bonds is distributable as a residue under said decision.

This executrix ought, therefore, to be charged with only $75 or less for interest on U. S. bonds in October, 1898, and $75 or less for the same in January, 1899, instead of $110, as in said account, and should be credited with $140, the difference between $440, one year's interest on $11,000 of said bonds, charged to her in her first account, and $300, one year's interest on $7,500 of said bonds.

2. That the amount of $32.20, costs in the Court of Appeals, instead of being charged against her, should be credited to her as an expense of her administration, as she has acted throughout in good faith, according to the advice of counsel and the orders of this honorable court, and the appeal taken was necessary in order to obtain a construction of the will written by the testator himself in what is alleged to be obscure and ambiguous language. She also asks credit for a bill of $6 and a bill of $20, paid by her as executrix for printing the briefs on the appeals in this case, for the same reasons.

3. In order to reserve all rights, in case of further appeal, she objects that this honorable court, holding orphans' court, is without jurisdiction to order and direct a distribution to the next of kin of a balance alleged to be in the hands of an executrix and not disposed of by the will, and that its order will not protect her or her surety in making such a distribution, and also that there is no balance in this case undisposed of by the will.

4. She further objects that this branch of the court can distribute such a balance, if at all, only in accordance with the statute of distributions contained in the Maryland act of 1798, ch. 101, sub. ch. 11, which is the only guide and authority of this court in distributing the personalty of an intestate to and among his next of kin,
and according to this chapter the widow of said Alexander M.
23 Kenaday is entitled to one-half of the alleged residue as to which he died intestate before distribution to his collateral relations; and, if said chapter be held not to apply, then she submits that if there be, as has been alleged in these proceedings, a minor child, named Orville Helm Bissell, of Eloise Piles Bissell, a niece of said testator, who died before the said testator, then there is no authority for excluding said minor child from taking his parent's share, as one of the "next of kin," the words excluding representation among such collaterals being contained in said chapter.

WM. H. DENNIS,
Attorney for Executrix.

Endorsed: No. 7744, D. 23. Kenaday, Alexander M., estate of. Objections of executrix to account stated by register of wills. Filed Feb. 10, 1899. J. Nota McGill, register of wills.

24 *Order.*

Filed February 10, 1899.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of ALEXANDER M. KÉNADAY, Dec.

This cause came on for further directions upon the final account of Mary Louise Kenaday, executrix of the estate of Alexander M. Kenaday, dec., as restated in pursuance of the opinion of the Court of Appeals rendered herein on the 3d day of January, 1899, reversing and remanding this cause, and said account is by the court passed and approved.

Thereupon, on motion of Arabella D. Sinnott, by her attorneys, it appearing from said account that there is in the hands of the said executrix, Mary Louise Kenaday, belonging to the said Arabella D. Sinnott, as distributee of the estate of Alexander M. Kenaday, deceased, the sum of ($4,142.82) four thousand one hundred and forty-two dollars and eighty-two cents, which she is now entitled to have paid over to her, it is therefore ordered by the court that Mary Louise Kenaday, executrix of Alexander M. Kenaday, dec., forthwith pay over & deliver to the said Arabella D. Sinnott, through her attorneys of record, the said sum of ($4,142.82) four thousand one hundred and forty-two $\frac{82}{100}$ dollars, being her distributive share in said estate, taking receipt for same.

A. C. BRADLEY, *Justice.*

Endorsed: No. 7744, D. 23. *In re* estate of Alexander M. Kenaday, deceased. Order directing Mary Louise Kenaday, executrix, to pay to Arabella D Sinnott $4,142.82. Filed Feb. 10, 1899. J. Nota McGill, register of wills.

25 *Appeal by Executrix.*

Filed February 10, 1899.

In the Supreme Court of the District of Columbia, Holding Orphans' Court.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

Mary Louise Kenaday, executrix of Alexander M. Kenaday, deceased, appeals in open court to the Court of Appeals from the order, dated this 10th day of February, 1899, approving and passing the account headed "Account of Mary Louise Kenaday, executrix under the will of Alexander M. Kenaday, deceased, stated by the register of wills, in pursuance of an order of court passed herein January 20th, 1899," and from an order directing her to distribute forthwith

to Arabella D. Sinnott, in pursuance of said account and order, the amount therein mentioned as her share.

WM. H. DENNIS,
Attorney for Executrix.

Endorsed: No. 7744, D. 23. *Kenaday*, Alexander M., estate of. Appeal by executrix. Filed Feb. 10, 1899. J. Nota McGill, register of wills.

26 *Order Fixing Supersedeas Bond.*

Filed February 10, 1899.

In the Supreme Court of the District of Columbia, Holding Orphans' Court.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

Mary Louise Kenaday, executrix of Alexander M. Kenaday, deceased, having appealed in open court to the Court of Appeals from the order dated this day approving and passing the account headed "Account of Mary Louise Kenaday, executrix under the will of Alexander M. Kenaday, deceased, stated by the register of wills, in pursuance of an order of court passed herein January 20th, 1899," and from an order directing her to distribute to Arabella D. Sinnott, in pursuance of said account and order, the amount therein mentioned as her share, it is adjudged and ordered, this tenth day of February, 1899, that the amount of bond to be given on said appeal to act as a supersedeas be, and is hereby, fixed at the sum of eight thousand dollars.

A. C. BRADLEY, *Justice.*

Endorsed: No. 7744, D. 23. Kenaday, Alexander M., estate of. Order reciting appeal by executrix in open court and fixing supersedeas bond. Filed Feb. 10, 1899. J. Nota McGill, register of wills.

27 *Waiver of Citation.*

Filed February 13, 1899.

In the Supreme Court of the District of Columbia, Holding Orphans' Court.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

On appeal this tenth day of February, A. D. 1899, taken by Mary Louise Kenaday, executrix, to the Court of Appeals of the District of Columbia, citation is hereby waived.

F. P. B. SANDS,
Attorney for Appellees.

Endorsed: No. 7744, D. 23. Kenaday, A. M., estate of. Waiver of citation on appeal. Filed Feb. 13, 1899. J. Nota McGill, register of wills.

Order.

Filed February 25, 1899.

In the Supreme Court of the District of Columbia, Holding an Orphans' Court.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

It is by the court, this 25th day of February, 1899, ordered and decreed that the order passed herein February 10, 1899, fixing the amount of the appeal bond be, and it hereby is, modified so
28 that the bond of $8,000 therein mentioned shall run to Arabella D. Sinnott, to operate as a supersedeas to the order directing the payment to her of $4,142.82, and that the penalty of a bond for costs in the matter of the appeal from the order approving the account filed the same day be fixed at fifty dollars, or in lieu of such bond for costs a deposit of the same amount in cash.

A. C. BRADLEY, *Justice.*

Endorsed: No. 7744, D. 23. *In re* estate of Alexander M. Kenaday, deceased. Order making appeal bond of $8,000 run to Arabella D. Sinnott, to operate as a supersedeas to the order directing the payment to her of $4,142.82, and penalty of bond for costs on appeal from order approving account, $50. Filed Feb. 25, 1899. J. Nota McGill, register of wills.

Receipt of Clerk.

Filed February 28, 1899.

Supreme Court of the District of Columbia, the 28th Day of February, 1899.

In re Estate of ALEX. M. KENADAY. No. 7744, Adm'*i*.

Received of Wm. H. Dennis, Esq., fifty and $\frac{x}{100}$ dollars, deposited in lieu of bond for appeal on behalf of Mary L. Kenaday, appellant.

JOHN R. YOUNG, *Clerk.*

Endorsed: No. 7744, D. 23, adm'n doc. Kenaday, Alexander M., estate of. Receipt of clerk of sup. ct., D. C., for $50 deposit in lieu of bond. Filed Feb. 28, 1899. J. Nota McGill, register of wills.

29 Extract from "Administration docket No. 23, J. N. McG.," one of the records in the office of the register of wills for the District of Columbia, *in re* estate of Alexander M. Kenaday, deceased.

* * * * * * *

" 1899, March 1.—Bond of executrix for appeal, in the penalty of $8,000, having been approved by the court, filed and recorded in

Liber Adm'n Bonds #26, J. N. McG., folio 120½, and transmitted to the supreme court D. C."

* * * * * * *

30 *Notice.*

Filed March 14, 1899.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In re Estate of ALEXANDER M. KENADAY, Deceased. No. 7744.

Notice.

On the appeal taken by Mary Louise Kenaday, executrix, February 10, 1899, in the above-entitled cause she desires to be included in the transcript of record, as sufficient for the determination of the questions on appeal, copies of the following papers on file, viz:

Last will of Alexander M. Kenaday.
Bond of executrix.
Notice to claimants, filed June 10, 1898.
Petition of A. B. Sinnott *et al.*, filed July 8, 1898.
Account of executrix, filed July 15, 1898.
Exceptions of A. D. Sinnott *et al.*, filed July 22, 1898.
Order to Secretary of Treasury, filed July 22, 1898.
Certificate from " " " " Aug. 5, "
Answer to exceptions, " " 5, "
Order approving account, " Oct. 11, "
Appeal by exceptors, " " 13, "

(NOTE.—The above, except bond, were in record on appeal by claimants.)

Mandate of Court of Appeals, filed Jan. 20, 1899.
Order of reference to register of wills. filed Jan. 20, 1899.
Affidavit of Arabella D. Sinnott, " " 26, "
" " Wm. A. Piles *et al.*, " Feb. 10, "
Account stated by register of wills, " " " "
Objections by executrix, " " " "
Order approving account (on the a/c), " " "
" directing payment to Mrs. Sinnott, " " "
Appeal by executrix, " " " "
Order fixing supersedeas bond, " " " "
Waiver of citation, " " " "
Order directing form of supersedeas bond, " 25, "
Receipt of clerk for $50, " " " "
Note of filing bond in $8,000, " March 1, "

WM. H. DENNIS,
Attorney for Executrix.

March 14, 1899.

31 Endorsed: No. 7744. #1725. Kenaday, Alexander M., estate of. Notice of papers desired by executrix to be in-

cluded in transcript of record on her appeal. Wm. H. Dennis, attorney for executrix. Filed Mar. 14, 1899. J. Nota McGill, register of wills.

Objections by Arabella D. Sinnott.

Filed March 16, 1899.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

Estate of ALEXANDER M. KENADAY, Dec. # 7744.

Objections by Arabella D. Sinnott, appellee, to the papers on file enumerated in the notice of Wm. H. Dennis being copied in the transcript for the Court of Appeals.

I object to any paper being copied into such transcript which was filed prior to Jan. 20th, 1899, the date of the mandate from the court of appeals was filed reversing & remanding the case of Arabella D. Sinnott *et als. v.* Mary Louise Kenaday, executrix. This objection, therefore, covers all the papers enumerated in the notice of Wm. H. Dennis, att'y, &c., from item 1 to & inclusive of item 11.

I insist that the only papers necessary & proper to be copied into this transcript are those included from item 12 to & including item 25 in the said notice of Wm. H. Dennis, att'y.

W. A. MILLIKEN,
Att'y for Arabella D. Sinnott, Appellee.

32 Endorsed: No. 7744. *In re* estate of Alexander M. Kenaday, deceased. Objections by att'y for Arabella D. Sinnott to certain papers being copied into the transcript for the Court of Appeals. Filed Mar. 16, 1899. J. Nota McGill, register of wills.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

[10-ct. int. rev. stamp.]

DISTRICT OF COLUMBIA, *To wit:*

I, J. Nota McGill, register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify the foregoing to — a true copy of the original will of Alexander M. Kenaday, deceased, filed and recorded in the office of the register of wills for the District of Columbia aforesaid; also that pages numbered 1 to 43, inclusive, constitute a true and perfect transcript of the record in case # 7744, Estate of Alexander M. Kenaday, deceased.

And I further certify that the said will, after having been proven by the witnesses thereto, was, by the order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the 23rd day of April, A. D. one thousand eight hundred and ninety-seven.

In testimony whereof I hereunto subscribe my name
[SEAL.] and affix the seal of the said supreme court, special term for orphans' court business, this 25th day of March, A. D. 1899.

J. NOTA McGILL.

33 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia. }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 44, inclusive, to be a true and correct transcript of the record and proceedings in said court, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 7744, adm'n doc., *In re* estate of Alexander M. Kenaday, deceased, as the same remains upon the files and records of said court.

In witness whereof I hereunto subscribe my name and
[SEAL.] affix the seal of said court, at the city of Washington, in said District, this 27th day of March, A. D. 1899.

JOHN R. YOUNG, *Clerk.*

34 [Endorsed:] District of Columbia supreme court. No. 890. Mary Louise Kenaday, executrix, appellant, *vs.* Arabella D. Sinnott *et al.* Court of Appeals, District of Columbia. Filed Mar. 27, 1899. Robert Willett, clerk.

35 MARY L. KENADAY, Ex'x, Appellant, }
vs. } No. 888 & No. 890.
ARABELLA D. SINNOTT & Others. }

We have examined the transcripts of the record of proceedings in the special term for orphans' court business, filed by the respective parties, and finding that said court below has, in the restatement of the account of the estate of Alexander M. Kenaday, deceased, followed and observed the opinion and mandate of this court on a former appeal by said Arabella D. Sinnott—

It is therefore ordered that the motion made by the said Arabella D. Sinnott to dismiss or affirm the order of the court below, approving and passing said final account of said estate, under rule 16 of this court, be and the same is denied; but that the said final order of said court approving and passing said account, the same bearing date the 10th day of February, 1899, on the appeal of said Mary L. Kenaday, ex'x., be, and the same is hereby, affirmed, the said account appearing to be stated in accordance with the mandate of this court issued on the former appeal.

(Endorsed:) No. 888. Mary Louise Kenaday, executrix, &c., appellant, *vs.* Arabella D. Sinnott. And No. 890. Mary Louise Kenaday, executrix, &c., appellant, *vs.* Arabella D. Sinnott *et al.* Opinion *per curiam.* Court of Appeals, District of Columbia. Filed April 5, 1899. Robert Willett, clerk.

36 WEDNESDAY, *April 5th, A. D.* 1899.

MARY LOUISE KENADAY, Executrix, Appellant,
vs.
ARABELLA D. SINNOTT, WILLIAM A. Piles, Ida Piles Miller, and Belle Hubert. } No. 890. April Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the order of the said supreme court in this cause of February 10, 1899, approving and passing account be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

April 5, 1899.

37 TUESDAY, *April 11th, A. D.* 1899.

MARY LOUISE KENADAY, Executrix, Appellant,
vs.
ARABELLA D. SINNOTT, WILLIAM A. PILES, IDA PILES Miller, and Belle Hubert. } No. 890.

On motion of Mr. Wm. H. Dennis, attorney for the appellant in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond to act as a supersedeas in the sum of ten thousand dollars.

38 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Mary Louise Kenaday, executrix, appellant, and Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, appellees, a manifest error hath happened, to the great damage of the said appellant, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right

and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

39 FRIDAY, *April 14th, A. D.* 1899.

MARY LOUISE KENADAY, Executrix, Appellant,
vs.
ARABELLA D. SINNOTT, WILLIAM A. PILES, IDA PILES Miller, and Belle Hubert. } No. 890.

Mr. Wm. H. Dennis, of counsel for the appellant in the above-entitled cause, presented to the court for approval supersedeas bond on writ of error to Supreme Court of the United States in the sum of ten thousand dollars.

In the Court of Appeals of the District of Columbia.

MARY L. KENADAY, Executrix, Appellant,
vs.
ARABELLA D. SINNOTT ET AL. } No. 890.

Assignment of Errors.

Mary L. Kenaday, executrix of the last will of Alexander M. Kenaday, deceased, desiring to take this cause by writ of error into the Supreme Court of the United States, respectfully assigns the following as errors in the final judgment of the Court of Appeals—that is to say, the court erred:

1. In refusing to decide that the justice of the supreme court of the District of Columbia, holding the special term of that court for orphans' court business, has no jurisdiction to order and compel distribution by an executrix, to the relations of a testator, of a sum in the hands of such an executrix alleged to be not bequeathed by the will, and in overruling the contention of executrix that such a question is exclusively within the jurisdiction of equity or chancery.

40 2. In deciding that the justice holding said special term had jurisdiction to construe the will of said testator for the purpose of arriving at the conclusion mentioned.

3. In holding that the judicial construction of the will of said testator should be that he failed to bequeath the beneficial interest of part of his personal estate, to wit, sundry United States bonds, instead of holding that they all passed to his widow.

4. In holding that the widow was not entitled to at least one-half of any residue of personal estate not bequeathed by testator.

5. In ignoring and thereby overruling the objections of the executrix to the account stated by the register of wills and dated February 10, 1899.

6. In affirming the order of the court below bearing date February 10, 1899, approving and passing the account termed the final account of this estate.

WM. H. DENNIS,
Attorney for Executrix.

(Endorsed:) Court of Appeals D. C. Kenaday, executrix, appellant, *v.* Sinnott & others. No. 890. Assignment of errors. Court of Appeals, District of Columbia. Filed Apr. 14, 1899. Robert Willett, clerk.

41 In the Court of Appeals of the District of Columbia.

MARY L. KENADAY, Executrix, Appellant,
vs.
ARABELLA D. SINNOTT, WILLIAM A. PYLES, IDA PYLES Miller, and Belle Hubert. } No. 890.

Mary L. Kenaday, executrix of the last will of Alexander M. Kenaday, deceased, not being absolutely advised whether her proceeding to obtain a review in the Supreme Court of the United States should be designated as a writ of error or an appeal, appeals to said Supreme Court of the United States from the order of the Court of Appeals herein bearing date of the 5th day of April, 1899, and prays that the record, supersedeas bond, and other proceedings on her writ of error be taken as the record, supersedeas bond, and proceedings on this appeal, if the latter be decided to be technically the proper method in the premises.

WM. H. DENNIS,
Attorney for Executrix.

(Endorsed:) No. 890. Kenaday's Executrix *v.* Sinnott and others. Appeal of executrix to the Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Apr. 17, 1899. Robert Willett, clerk.

42 In the Court of Appeals of the District of Columbia.

MARY L. KENADAY, Executrix, Appellant,
vs.
ARABELLA D. SINNOTT, WILLIAM A. PYLES, IDA PYLES Miller, and Belle Hubert. } No. 890.

On motion of Mary L. Kenaday, executrix, by her attorney, and it appearing to the court that *that* the practice in cases exactly of the character of the present one has not been established by precedent, it is adjudged and ordered by the court this 17th day of April, 1899, that said executrix be, and she is hereby, allowed an appeal from the order of this court passed herein April 5, 1899, and that

the same bond in the sum of ten thousand dollars, to act as a supersedeas upon the issuing of a writ of error in this case, shall stand and act as a supersedeas upon said appeal, or according as said writ of error or appeal is ultimately decided to be the method of obtaining a review of the decision of this court in said cause.

R. H. ALVEY, *Ch. Justice.*

(Endorsed:) Court of Appeals D. C., April term, 1899. No. 890. Mary L. Kenaday, executrix, appellant, *vs.* Arabella D. Sinnott *et al.* Order allowing appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Apr. 18, 1899. Robert Willett, clerk.

43 TUESDAY, *May 2d, A. D.* 1899.

MARY LOUISE KENADAY, Executrix, Appellant, *vs.* ARABELLA D. SINNOTT, WILLIAM A. PILES, IDA Piles Miller, and Belle Hubert.	No. 890, April Term, 1899.

The supersedeas bond on writ of error in the above-entitled cause is hereby approved as of April 14, 1899.

Per MR. CHIEF JUSTICE ALVEY.

May 2, 1899.

44 Know all men by these presents that we, Mary Louise Kenaday, executrix of the last will of Alexander M. Kenaday, deceased, as principal, and Fidelity and Deposit Company of Maryland, a corporation of Maryland, as surety, are held and firmly bound unto Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert in the full and just sum of ten thousand dollars, to be paid to the said Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, their and each of their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Mary Louise Kenaday, executrix, as aforesaid, appellant, and said Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, a judgment was rendered against the said Mary Louise Kenaday, executrix, as aforesaid, and the said Mary Louise Kenaday, executrix, as aforesaid, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Mary Louise Kenaday, executrix, as aforesaid, shall prosecute said writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

MARY LOUISE KENADAY. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [SEAL.]
By J. SPRIGG POOLE, *Attorney-in-fact.* [SEAL.]

[Seal of Fidelity and Deposit Company of Maryland.]

Sealed and delivered in the presence of—
DORSEY CLAGETT.

Approved by—
R. H. ALVEY,
Chief Justice Ct. App'ls.

[Endorsed:] No. 890. Mary Louise Kenaday, executrix, appellant, *vs.* Arabella D. Sinnott *et al.* Supersedeas bond on writ of error to S. C. U. S. Court of Appeals, District of Columbia. Filed April 14, 1899. Robert Willett, clerk.

45 UNITED STATES OF AMERICA, *ss:*

To Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Mary Louise Kenaday, executrix, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 2d day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

On this ninth day of May, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared William H. Dennis before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Francis P. B. Sands, attorney for Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, in person, this ninth day of May, A. D. 1899.

WILLIAM H. DENNIS.

Sworn to and subscribed the ninth day of May, A. D. 1899.

ROBERT WILLETT,
Clerk Court of Appeals, Dist. of Col.,
By H. W. HODGES,
Ass't Clerk.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 9, 1899. Robert Willett, clerk.

46 UNITED STATES OF AMERICA, *ss:*

To Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Mary Louise Kenaday, executrix, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 2d day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

On this ninth day of May, in the year of our Lord one thousand eight hundred and ninety-nine, personally appeared William H. Dennis before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Francis P. B. Sands, solicitor and attorney for Arabella D. Sinnot, William A. Piles, Ida Piles Miller, and Belle Hubert, in person, this ninth day of May, A. D. 1899.

WILLIAM H. DENNIS.

Sworn to and subscribed the ninth day of May, A. D. 1899.

ROBERT WILLETT,
Clerk Court of Appeals, Dist. of Col.,
By H. W. HODGES,
Ass't Clerk.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 9, 1899. Robert Willett, clerk.

47 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 46, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Mary Louise Kenaday, executrix, appellant, *vs.* Arabella D. Sinnott, William A. Piles, Ida Piles Miller, and Belle Hubert, No. 890, April term, 1899, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 18th day of May, A. D. 1899.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 17,419. District of Columbia Court of Appeals. Term No., 305. Mary Louise Kenaday, executrix, plaintiff in error and appellant, *vs.* Arabella D. Sinnott *et al.* Filed May 23d, 1899.